

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #11	CCRB Case #: 201507343	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/01/2015 6:30 AM	Location of Incident: Inside of § 87(2)(b)	Precinct: 33	18 Mo. SOL 3/1/2017	EO SOL 3/1/2017	
Date/Time CV Reported Tue, 09/01/2015 10:01 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/01/2015 10:01 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Francisc Pena	03923	910291	WARRSEC
2. DT3 Corey Gresko	1660	932745	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT2 Francisc Pena	Abuse: DT Francisco Pena entered and searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.DT3 Corey Gresko	Abuse: DT Corey Gresko entered and searched § 87(2)(b) in Manhattan.	§ 87(2)(b)

### Case Summary

On September 1, 2015, at approximately 6:30 a.m., DT Corey Gresko and DT Francisco Pena, both of the Manhattan Warrant Section, entered § 87(2)(b)'s apartment at § 87(2)(b) in Manhattan with a bench warrant for her son § 87(2)(b). While DT Gresko and DT Pena were inside the residence they searched through the closets and underneath the beds for § 87(2)(b) (Allegations A and B). § 87(2)(b) has yet to be arrested (Board Review 14).

There is no video for this case.

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b)
- § 87(2)(b) did not file a Notice of Claim (Board Review 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officers CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 01)
- DT Gresko has been a member of the service for 12 years and has five previous CCRB complaints and one case in which two premises entered and searched allegations were unsubstantiated.
- DT Pena has been a member of the service for 27 years and has two cases where allegations were substantiated. In case 9802591, a force and search (person) allegations were substantiated and the Board recommended charges; he was found not guilty at trial. In case 201410337, a premises entered and searched allegation was substantiated, and the Board recommended charges; the case has not been decided by the NYPD.

### Findings and Recommendations

#### Allegations Not Pleaded

§ 87(2)(g)

#### Recommendations

**Allegation A-Abuse of Authority: DT Francisco Pena entered and searched § 87(2)(b) in Manhattan.**

**Allegation B-Abuse of Authority: DT Corey Gresko entered and searched § 87(2)(b) in Manhattan.**

It is undisputed that DT Pena and DT Gresko entered § 87(2)(b) in Manhattan with the intention of arresting § 87(2)(b) in regards to an active and valid

bench warrant they had for § 87(2)(b) which listed that address, and although some details about the search are inconsistent, it is not in dispute that they searched in areas where a person could hide, such as closets and under beds, and did not search in places such as small drawers or small boxes or small cabinets.

§ 87(2)(b) alleged that when she initially opened her door, DT Pena immediately put his foot in the door. DT Pena showed § 87(2)(b) the bench warrant, at which point she explained that § 87(2)(b) did not live there and she had not seen him in years. § 87(2)(b) told the officers that she did not give them permission to come into her residence and search it without a search warrant, at which point DT Grecko stated that they had a search warrant as well, although he never provided one. The officers entered the residence. § 87(2)(b) believed that during the search, DT Pena was looking for § 87(2)(b) however he never explicitly stated that he was looking for him. Although it is possible that DT Gresko helped out DT Pena with the search, § 87(2)(b) did not recall him doing so (**Board Review 16**).

DT Pena was interviewed twice (**Board Review 17, Board Review 19**). DT Pena stated that prior to arriving at § 87(2)(b)'s apartment; he conducted a WISE check, which provided real time crime information about § 87(2)(b) and numerous other checks he could not recall. DT Pena explained that during the course of his investigation, he learned that § 87(2)(b) had been involved in a domestic incident at the Brooklyn address listed in the Warrant Informational. According to DT Pena, it would not have mattered which address they went to first to look for § 87(2)(b) but made the decision to go to the Manhattan address because it was the address provided by probation and listed on the arrest warrant, which was information provided by probation, which would have had an address that § 87(2)(b) provided to probation.

DT Pena stated that there was no reason for him to believe that § 87(2)(b) was at the residence during the time of the entry. He denied that he spoke to any neighbors and stated that they do not conduct surveillance for arrest warrants. He also denied that he observed anything about the residence that led him to believe that someone other than § 87(2)(b) was inside the residence. When asked if he heard anything that led him to believe someone was inside, he stated that when they first knocked, he heard footsteps coming to the front door but nothing other than that. DT Pena stated that they never have an indication someone is home, but they just have to "do what they got to do" and follow up with the case.

When DT Pena and DT Gresko arrived to § 87(2)(b)'s apartment, they asked § 87(2)(b) what her last name was. Once she provided the name § 87(2)(b) the officers explained to her that they were looking for § 87(2)(b) and provided her with a copy of the bench warrant to look at. When § 87(2)(b) told the officers that § 87(2)(b) was not there, DT Pena explained that they had a warrant signed by a judge and still needed to look around for him. Once § 87(2)(b) looked at the warrant, she understood and provided verbal permission to the officers to enter her apartment by stating, "Go ahead." DT Pena denied that § 87(2)(b) ever objected to the detectives entering her apartment, denied that he or DT Gresko ever put their foot in the door and denied that there was any discussion about entering the apartment before they entered. Once the detectives entered, they looked around § 87(2)(b)'s bedroom and living room. DT Pena stated that § 87(2)(b) was agitated and said that § 87(2)(b) had not lived there in fourteen years. DT Pena wrote in the Warrant Investigative Data sheet (**Board Review 05**) that he spoke with § 87(2)(b) who "demanded to see the warrant and refuse[d] to cooperate with our investigation." DT Pena wrote that they conducted a physical and visual inspection of the apartment. DT Pena stated that this referred to § 87(2)(b) being upset that they were looking for § 87(2)(b) at her residence and because

§ 87(2)(b) had provided her address. DT Pena knew that she was upset because of her body gestures which included having her glasses angled down and because she kept looking at her phone as she spoke to the officers. In addition, she made statements such as, “I don’t believe this” and “he hasn’t been here in fourteen years.” DT Pena could not provide any additional reasons why § 87(2)(b) was being uncooperative. DT Pena stated that as soon as he showed § 87(2)(b) the warrant and explained to her that her son had listed her address, she allowed the officers to enter. DT Pena explained that it is possible that the Warrant Informational was misinterpreted because he was trying to say that § 87(2)(b) was upset, not uncooperative.

DT Gresko also stated that § 87(2)(b) gave them verbal permission to enter the apartment after they explained to her that they needed to search her apartment to ensure that § 87(2)(b) was not there. DT Gresko stated that DT Pena explained to § 87(2)(b) that § 87(2)(b) had signed his probation papers listing her address as his address (**Board Review 18**).

The warrant (**Board Review 07**) and the Warrant Investigative Data sheet (**Board Review 05**) show that the officers possessed an active bench warrant for § 87(2)(b), which was issued on § 87(2)(b), and assigned on August 3, 2015. The bench warrant lists § 87(2)(b) in Manhattan as § 87(2)(b)’s residence address and shows that on August 29, 2015, numerous databases were checked.

Generally, officers entering a residence to perform an arrest must possess a warrant. According to *Payton v. New York*, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within (**Board Review 13**). According to New York State Criminal Procedure Law §530.70, a bench warrant should be executed in the same manner as a warrant of arrest (**Board Review 12**). CPL §120.80 states that without a search warrant or exigent circumstances, an officer can search the location only to the extent necessary to identify and safely arrest the subject of the bench warrant (**Board Review 11**). However, as stated in CPL §120.80 and affirmed by *People v. Cabral*, a police officer with an arrest warrant may only enter the defendant’s residence if he has a reasonable belief that the defendant is present at the time of the arrest warrant execution (**Board Review 13, 11**).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g) [Redacted]  
[Redacted]  
§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date